

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.10166 OF 2004

Chetak Co-op.Housing Society Ltd.	...Petitioner.
Vs.	
Mr.Anwar Pasha & Ors.	...Respondents.
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Mr.T. S. Gulabani i/b. Mr.Rakesh K. Bhasin & Mrs. S.R. Bhasin for the Petitioner.	
Mr. Chetan Kapadia for the Respondents.	

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CORAM : [DR.D.Y.CHANDRACHUD](#), J.

April 26, 2005.

P.C.:

The concurrent finding which has been arrived at by both the Courts below – the Co-operative Court and in appeal, the Co-operative Appellate Court – is that there was no parting with possession within the meaning of Bye-law 45(2) so as to warrant the Co-operative Society to levy non-occupancy charges. There is admittedly no subletting and no licence agreement. Parting with the possession of immovable property contemplates that the owner or the person who is otherwise entitled to possession has divested himself of his possession. The finding of both the Courts is that the owner of the residential flat had not divested himself of his possession in respect of the property. The interference of this

Court under Article 227 of the Constitution is not warranted on the finding which has been arrived at on the basis of the evidence on the record. Counsel appearing on behalf of the Petitioner is unable to show to the Court any part of the evidence from which it can be inferred that there was any parting with possession.

In so far as the quantification of maintenance charges is concerned, the Learned Judge of the Co-operative Appellate Court has noted that the Co-operative Society had in fact, charged compound interest which it was not entitled in law to do. The amount of outstandings has been arrived at after taking into account the payments which were made to the Society. The finding in this regard is contained in para 10 of the impugned order. No case for interference is made out. The Petition is accordingly rejected.

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